

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JOSE M. AVILES,

Plaintiff,

vs.

CAROLYN W. COLVIN,

Acting Commissioner of Social
Security Administration,

Defendant.

Case No. 2:15-cv-01275-RCJ-CWH

ORDER

This matter was referred to this Court on Plaintiff Jose M. Aviles's ("plaintiff") Application for Leave to Proceed In Forma Pauperis (doc. # 1), filed on July 6, 2015.

Pursuant to 28 U.S.C. § 1914(a), a filing fee of \$350.00 is required to commence a civil action in federal district court in addition to a new \$50 administrative fee, effective May 1, 2013, for a total of \$400. The court may authorize the commencement of an action "without prepayment of fees and costs or security therefor, by a person who makes an affidavit that he is unable to pay such costs or give security therefore." 28 U.S.C. § 1915(a).

Plaintiff submitted the affidavit required by § 1915(a) to show that he is unable to prepay fees and costs or give security for them. In his application, plaintiff states he is currently unemployed and receives \$186 per month in food stamps. Plaintiff also indicates he has no savings, and owns no real estate or other valuable property. Based on this information, the Court finds that plaintiff's income is insufficient to pay the filing fee in this case. See e.g., Rucker v. County of Santa Clara, No. C02-5981 JSW, 2003 WL 21440151, at *1 (N.D. Cal. June 17, 2003) (sufficient showing of indigency where plaintiff received

1 \$748.42 per month, and that amount was exceeded by his outstanding monthly expenses and debt)). Thus,
2 the Court finds that plaintiff satisfies the indigency requirement of 28 U.S.C. § 1915(a)(1).

3 Having concluded that plaintiff is entitled to proceed in forma pauperis, the Court now screens the
4 complaint under 28 U.S.C. § 1915(e)(2)(B), which requires dismissal of a case at any time if the Court
5 determines that it is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks
6 monetary relief against a defendant who is immune from such relief.

7 Upon review of plaintiff's complaint, the Court finds that plaintiff's allegations do not appear, on
8 their face, to be frivolous or malicious. Moreover, plaintiff's complaint does not appear, on its face, to fail
9 to state a claim pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3), nor does defendant appear to be immune
10 from suit. Thus, the Court finds that plaintiff satisfies the screening requirement of 28 U.S.C.
11 § 1915(e)(2)(B).

12 **CONCLUSION AND ORDER**

13 Accordingly, **IT IS HEREBY ORDERED** that plaintiff's Application to Proceed in Forma
14 Pauperis (doc. # 1) is **granted**.

15 **IT IS FURTHER ORDERED** that the Clerk of Court shall file the complaint (doc. # 1-1) and
16 serve the Acting Commissioner of the Social Security Administration by sending a copy of the summons
17 and complaint (doc. # 1-1) by certified mail to: (1) the Attorney General of the United States, Department
18 of Justice, 950 Pennsylvania Avenue, N.W., Room 4400, Washington, D.C. 20530; and (2) Office of the
19 Regional Chief Counsel, Region IX, Social Security Administration 160 Spear St., Suite 899, San
20 Francisco, CA 94105-1545.

21 **IT IS FURTHER ORDERED** that the Clerk of Court issue a summons to the United States
22 Attorney for the District of Nevada and deliver the summons and complaint (doc. # 1-1) to the U.S.
23 Marshal for service.

24 **IT IS FURTHER ORDERED** that from this point forward, plaintiff serve upon defendant, or
25 defendant's counsel of record, a copy of every pleading and motion plaintiff submits to the Court for
26 consideration. Plaintiff must include with the original paper submitted for filing, a certificate of service,
27 which states the date and that a true and correct copy of the document was mailed to defendant or
28 defendant's counsel of record. The Court may disregard any paper received by a district judge, magistrate

1 judge, or the Clerk of Court, which fails to include a certificate of service.

2 DATED: July 20, 2015

3
4
5 
6 **C.W. Hoffman, Jr.**
7 **United States Magistrate Judge**
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28